IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1018 of 1995

For Approval and Signature:

***HON'BLE* MISS JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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BHA.THA. JAYSINH KHIMJI - Applicant(s)

Versus

GOSWAMI ANIRUDHLALJI D,THRO'POA JAGDISHCHANDRA M KATARIA-Opponent(s)

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Appearance :

MR CH VORA for Petitioner

MR JR SHAH for Respondent

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 03/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 5th May, 1995 passed by the learned *Extra* Assistant Judge, Bhuj in Regular Civil Appeal No. 64 of 1988, the respondent-defendant in Regular Civil Suit No. 25 of 1982

has preferred the present Revision Application under Section 29 (2)of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act"**}.

The respondent-plaintiff is the owner of property bearing Municipal No. 4456-A, situated at Mandvi, District-Kachchh. In the year 1943, two shops and the open land were leased to the ancestor of the defendant for a monthly rent of 35 koris [equivalent to Rs. 16=69 paise], under the rent note Exh.90. The plaintiff instituted Regular Civil Suit No. 25 of 1982 in the Court of learned Civil Judge {JD}, Mandvi for recovery of possession of the suit premises on the ground, *inter alia*, that the defendant had, without the consent of the plaintiff, started construction of a room on the suit premises. The suit was contested by the defendant vide written statement Exh. 17. It was admitted that in the open land leased to the defendant, the defendant had constructed a room and had covered it with cement-sheets temporarily for the purpose of storage of materials. That the offending structure was not a permanent structure within the meaning of Section 13 (1)(b) of the Rent Act, and that it could be easily removed without causing any damage to the existing structure. At the request of the

plaintiff, the Court Commissioner was appointed. The panchnama prepared by the Court Commissioner has been produced at Exh. 96. The said panchnama reveals that the defendant had in the corner of the leased premises constructed a room admeasuring 18′ x 11 1/2′ and had covered it with cement sheets. For construction of the said room, the defendant had used two existing walls and had constructed other walls using the stone [*I am informed that the natural stone available in the area is used for the construction*]. The defendant had also placed a door and windows in the said room and had made pucca cement flooring. At the time of preparation of the said panchnama, the construction was still under hand. The learned Civil Judge, by judgement and order dated 30th April, 1988 held that the offending structure was not a permanent structure within the meaning of Section 13 (1) (b) of the Rent Act as it could be easily removed without causing damage to the existing structure. The learned Civil Judge dismissed the suit and passed decree in favour of the defendant. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 64 of 1988 in the Court of learned District Judge, Kachchh. The Appeal came to be allowed by the learned Assistant Judge. The learned Assistant Judge was of the opinion that the offending structure was a permanent structure within the meaning of

Section 13 [1](b) of the Rent Act. Accordingly, a decree for eviction has been passed against the defendant. Therefore, the present Revision Application.

Learned advocate Mr. Vora has assailed the judgment of the lower appellate court and has submitted that the lower appellate court had erred in not applying the correct test to ascertain whether the offending structure was a permanent structure within the meaning of Section 13 (1)(b) of the Rent Act. He has submitted that the lower appellate court has overlooked the explanation to Section 13 (1)(b) of the Rent Act. He has further submitted that the offending structure is being used as a garage for parking the motor car and such garage can not be said to be a permanent structure, as alleged. He has relied upon the evidence of the plaintiff and has submitted that the plaintiff also admitted that the offending structure was used as a garage for parking the motor car. In support of his submissions, he has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of **Om Prakash v. Amar Singh & Anr.** [*AIR 1987 SC 617*]. In the said matter before the *Hon'ble* Court, the relevant provisions referred to a construction made by the tenant which '***materially altered the accommodation***'. Considering the said provision, the Hon'ble Court held

that, **"..The Legislature intended that only those constructions which bring about substantial change in the front and structure of the building should provide a ground for tenant's eviction..."** It should be noted that the language of Section 13 [1](b) of the Rent Act is not identical to the provisions before the *Hon'ble* Supreme Court. Section 13 [1](b) of the Rent Act refers to a permanent structure without further qualification. In my view, therefore, the above referred observation made by the Hon'ble Supreme Court shall not be applicable in the present case. Mr. Vora has also relied upon the judgment of this Court in the matter of [Smt].**Laxmibehn Mavjibhai & Ors. vs. Shankarbhai Mulabhai** [*1995 (2) GLH 13*]. In the said matter, the learned Single Judge has considered the explanation to Section 13 [1](b) of the Rent Act and has held that, **"..Removability of structure without seriously damaging the premises is the test provided by the Legislature which is well accepted by this Court."** Section 13 [1](b) of the Rent Act and the explanation thereof read as under :-

> **13 [1](b) that, save as otherwise provided in section 23A, the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;**
>
> *Explanation* – **For the purpose of clause (b), no permanent structure shall deemed to be erected on any premises merely by reason of the construction of a partition wall, door or**

lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises.

The scope and ambit of the aforesaid explanation has been succinctly discussed by this Court in the matter of **Patel Chunilal Dhanjibhai v. Patel Vallabhbhai Ambalal** [*XVI GLR 481*] and has been followed since then. For applying the test of removability, the offending structure shall fall within the categories mentioned in the aforesaid explanation. It is evident that the construction referred to in the above explanation is the one which is adopted for better enjoyment of the leased premises. It has been held that, "**..Examining the concept of '*such other alterations*' in light of the aforesaid legislative intention I am of the opinion that the other alterations contemplated by the Explanation are mere alterations not amounting to independent additional structures. Therefore, the construction of the room in question which is an independent structure on the suit land is not excepted either by any of the specific expressions used in the Explanation or by the residuary expression '*such other alterations*' used in the Explanation.**"

In the present case, the facts are not disputed. The suit premises leased to the defendant comprise two shops and open land. The said open land was used by the defendant as open land since inception of the tenancy. The submission that the offending structure has been raised for better enjoyment of the open land is not tenable. In my view, a permanent structure made of stones has been raised and is intended to be used permanently for a long time. Further the defendant did admit in the written statement that the suit room was constructed for storage of goods and materials. Moreover, the construction of the offending structure has changed the identity of the leased premises in as much as the area of the open land has been reduced and the area of constructed land has been increased. No exception can be made with respect to the construction made of durable materials which is intended to be used for a long period, and which has changed the identity of the leased premises. In my view, the offending structure is a permanent structure within the meaning of Section 13 [1] (b) of the Rent Act which should entitle the plaintiff to a decree for eviction.

No other contention is raised before me. The Revision Application is dismissed with cost. Rule is

discharged. *Interim* relief stands vacated.

At the request of learned advocate Mr. Vora, it is directed that the interim stay granted pending this Revision Application shall stand continued till 3rd October, 2005 on usual conditions.

{Miss R.M Doshit, J.}

*Prakash**